

Richard G. Dunson

Richard G. Dunson

1950

NEW HAMPSHIRE LAW LIBRARY

Nov. 3

SEP 03 1998

CONCORD, N.H.

John C. MacLean, Legal Counsel,
Governor of New Hampshire,
Concord, New Hampshire

Re: Whether or not the Adjutant General would
become a holdover if a successor is not
named.

Dear Governor MacLean:

The Adjutant General is a constitutional officer, Part II, Article XI, Constitution of New Hampshire. By R.L., c. 213, s. 56, as amended by Laws of 1951, c. 103, the Adjutant General shall hold office until he shall have reached the age of sixty-five years, A distinction is made between statutes which cap a maximum of a public officer's official tenure and statutes which limit the right of resignation. *Statutes of the State of N.H. 1950, Chap. 29*. Whether the Adjutant General can become a holdover depends on whether the limitation by statute mentioned goes to the qualifications to hold the office. I am of the opinion that it does.

The statute does not expressly prohibit holding office after the Adjutant General has attained age sixty-five as is the case with respect to judges. R.L., c. 26, s. 2. Nevertheless, the fact that it is not provided that the Adjutant General shall hold office until a successor is qualified indicates an intent of the Legislature that the office shall become vacant.

It will be noted that Laws of 1950, chapter 29, relating to terms of office of heads of certain departments, expressly provided that as to each of those offices mentioned the incumbent shall hold office until his successor is duly appointed and qualified. The Adjutant General is not included in the list of those for whom this express holdover provision is made. The Legislature must be presumed to have known this when enacting c. 103, Laws of 1951.

C O P Y

3

November 2, 1950

as the Adjutant-General should hold over after his appointment as Adjutant, he would not be a Major General thereafter but a Lieutenant Colonel in fact; although he would be entitled to the decorations of the office and could not be punished as an Adjutant. His honorary commission would not supersede the existence of a vacancy of Adjutant with the need for a future filling of the office as provided in Article 43 of the Constitution of New Hampshire.

卷之三

1870-1871 • 1872-1873

卷之三